

United States Court of Appeals For the First Circuit

No. 13-1983

ERIC J. SNEAD,

Petitioner,

v.

UNITED STATES,

Respondent.

Before

Torruella, Howard and Kayatta,
Circuit Judges.

JUDGMENT

Entered: August 20, 2013

The request for permission to file a second or successive motion pursuant to 28 U.S.C. § 2255 is denied. The petitioner proposes to file a new section 2255 motion based on the Supreme Court's recent decision in Alleyne v. United States, 133 S. Ct. 2151 (2013). The petitioner has failed to satisfy the requirements of 28 U.S.C. § 2255(h) because Alleyne has not been made retroactive by the Supreme Court to cases on collateral review. See Sepulveda v. United States, 330 F.3d 55, 66 (1st Cir. 2003) ("28 U.S.C. § 2255[(8)] restricts second or successive habeas petitions challenging federal convictions to those new rules of constitutional law explicitly made retroactive by the Supreme Court itself to cases on collateral review."). Moreover, even if Alleyne applied retroactively, it would not provide any grounds for relief. The rule in Alleyne only applies to statutory minimum sentences; the case did not address guideline provisions that increase the applicable offense level. See Alleyne, 133 S. Ct. at 2155.

The request for permission to file a second or successive motion pursuant to 28 U.S.C. § 2255 is

denied.¹

By the Court:

/s/ Margaret Carter, Clerk.

cc:

Eric J. Snead

Adi Goldstein

Donald Lockhart

¹"Th[is] . . . denial of an authorization . . . to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." See 28 U.S.C. § 2244(b)(3)(E); Lykus v. Corsini, 565 F.3d 1 (1st Cir. 2009); see also 28 U.S.C. § 2255(h).